

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals  
for the Second Circuit, held at the Daniel Patrick Moynihan  
United States Courthouse, 500 Pearl Street, in the City of  
New York, on the 27<sup>th</sup> day of September, two thousand seven.

PRESENT:

HON. DENNIS JACOBS,  
*Chief Judge,*  
HON. GUIDO CALABRESI,  
HON. RICHARD C. WESLEY,  
*Circuit Judges.*

HE LIN,  
*Petitioner,*

v.

07-0733-ag  
NAC

UNITED STATES DEPARTMENT OF JUSTICE,  
PETER D. KEISLER,<sup>1</sup> ACTING ATTORNEY GENERAL,

*Respondent.*

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting Attorney General Peter D. Keisler is automatically substituted for former Attorney General Alberto R. Gonzales as a respondent in this case.

1     **FOR PETITIONER:**             Yee Ling Poon, Robert Duk-Hwan Kim  
2                                     (on the brief), New York, New York.

3  
4     **FOR RESPONDENT:**           Peter D. Keisler, Assistant Attorney  
5                                     General, Civil Division, Lisa  
6                                     Arnold, Senior Litigation Counsel,  
7                                     Jennifer Keeney, Attorney, Office of  
8                                     Immigration Litigation, United  
9                                     States Department of Justice,  
10                                    Washington, District of Columbia.

11  
12           UPON DUE CONSIDERATION of this petition for review of a  
13     decision of the Board of Immigration Appeals ("BIA"), it is  
14     hereby ORDERED, ADJUDGED, AND DECREED, that the petition for  
15     review is DENIED.

16           Petitioner He Lin, a native and citizen of China, seeks  
17     review of the February 16, 2007 order of the BIA affirming  
18     the August 23, 2005 decision of Immigration Judge ("IJ")  
19     Sarah Burr, denying petitioner's application for asylum,  
20     withholding of removal, and relief under the Convention  
21     Against Torture ("CAT"). *In re He Lin*, No. A97 959 001  
22     (B.I.A. Feb. 16, 2007), *aff'g* No. A97 959 001 (Immig. Ct.  
23     N.Y. City, Aug. 23, 2005). We assume the parties'  
24     familiarity with the underlying facts and procedural history  
25     of the case.

26           When the BIA does not expressly "adopt" the IJ's  
27     decision, but its brief opinion closely tracks the IJ's  
28     reasoning, the Court may consider both the IJ's and the  
29     BIA's opinions for the sake of completeness if doing so does  
30     not affect the Court's ultimate conclusion. *Jigme Wangchuck*

1 v. *DHS*, 448 F.3d 524, 528 (2d Cir. 2006). We review the  
2 agency's factual findings under the substantial evidence  
3 standard, treating them as "conclusive unless any reasonable  
4 adjudicator would be compelled to conclude to the contrary."  
5 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v. INS*, 386  
6 F.3d 66, 73 & n.7 (2d Cir. 2004), overruled in part on other  
7 grounds by *Shi Liang Lin v. U.S. Dep't of Justice*, – F.3d –,  
8 2007 WL 2032066, at \*6 (2d Cir. July 16, 2007) (en banc).

9 Lin does not dispute the agency's finding that he did  
10 not suffer past persecution; rather, he argues that he  
11 established a well-founded fear of future persecution. To  
12 establish asylum eligibility based on future persecution, an  
13 applicant must show that he subjectively fears persecution  
14 and that this fear is objectively reasonable. *Ramsameachire*  
15 *v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004). A fear is  
16 objectively reasonable "even if there is only a slight,  
17 though discernible, chance of persecution." *Diallo v. INS*,  
18 232 F.3d 279, 284 (2d Cir. 2000) (citation omitted). On the  
19 other hand, a fear is not objectively reasonable if it lacks  
20 "solid support" in the record and is merely "speculative at  
21 best." *Jian Xing Huang v. INS*, 421 F.3d 125, 129 (2d Cir.  
22 2005).

23 Regarding Lin's fear of persecution based on a possible  
24 future violation of China's family planning policy, the

1 agency properly found that there is no evidence in the  
2 record to show that his fear is anything other than  
3 hypothetical. The BIA properly noted that Lin's claim is  
4 dependent upon numerous assumptions, namely that he will  
5 marry, that he will have more children than the Chinese  
6 family planning policy permits, and that Chinese authorities  
7 will seek to enforce the policy by subjecting him to  
8 penalties rising to the level of persecution. As such, his  
9 fear of persecution lacks "solid support" in the record and  
10 is merely "speculative at best." *Id.*; but *cf.* *Rui Ying Lin*  
11 *v. Gonzales*, 445 F.3d 127, 135-36 (2d Cir. 2006).

12 Lin also argues that the Chinese government will impute  
13 an anti-government opinion to him based on his illegal  
14 departure and will persecute him accordingly. However, as  
15 the IJ noted, there is no evidence to suggest that Lin left  
16 China illegally. Rather, Lin testified that he used his own  
17 passport and that it was stamped upon his exit by Chinese  
18 officials. Furthermore, the BIA has held that the fact that  
19 a country may punish a citizen for an illegal departure does  
20 not generally qualify an alien for refugee protection. See,  
21 *e.g.*, *Matter of Sibrun*, 18 I. & N. Dec. 354, 359 (BIA 1983).  
22 Even if Lin relied on smugglers at some point during his  
23 journey to the U.S., he failed to present evidence or  
24 testimony showing that the Chinese government imputes a

1 political opinion to its citizens who leave the country in  
2 that manner, or that such individuals are subjected to harm  
3 rising to the level of persecution. Accordingly, Lin has  
4 failed to show that there is a discernible chance of  
5 persecution on account of his illegal departure. See  
6 *Diallo*, 232 F.3d at 284. Therefore, the agency properly  
7 denied Lin's asylum claim.

8 Because Lin was unable to show the objective likelihood  
9 of persecution needed to support an asylum claim, he was  
10 necessarily unable to meet the higher standard required to  
11 succeed on a claim for withholding of removal. See *Paul v.*  
12 *Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006).

13 The agency also properly denied Lin's CAT claim. To  
14 qualify for CAT relief, an applicant must show that he or  
15 she would more likely than not be tortured by, or with the  
16 acquiescence of, government officials acting in an official  
17 capacity. See 8 C.F.R. §§ 1208.16(c), 1208.17; *Mu Xiang Lin*  
18 *v. U.S. Dep't of Justice*, 432 F.3d 156, 159 (2d Cir. 2005)  
19 (citing *Mu-Xing Wang v. Ashcroft*, 320 F.3d 130, 133-34 (2d  
20 Cir. 2003)). Lin argues that if returned to China, he will  
21 likely be detained and tortured because of his illegal  
22 departure. Notwithstanding the fact that it is unclear  
23 whether Lin left China illegally, he failed to establish  
24 that an individual in his particular circumstances would

1 more likely than not be tortured by or at the instigation  
2 of, or with the consent or acquiescence of, a public  
3 official or other person acting in an official capacity.  
4 *See Mu-Xing Wang*, 320 F.3d at 143-44. Accordingly, Lin has  
5 failed to establish a clear probability of torture based on  
6 his illegal departure. *See id.*; *Mu Xiang Lin*, 432 F.3d at  
7 159.

8 For the foregoing reasons, the petition for review is  
9 DENIED. Having completed our review, any stay of removal  
10 that the Court previously granted in this petition is  
11 VACATED, and any pending motion for a stay of removal in  
12 this petition is DISMISSED as moot. Any pending request for  
13 oral argument in this petition is DENIED in accordance with  
14 Federal Rule of Appellate Procedure 34(a)(2), and Second  
15 Circuit Local Rule 34(d)(1).

16 FOR THE COURT:  
17 Catherine O'Hagan Wolfe, Clerk  
18

19 By: \_\_\_\_\_  
20 Oliva M. George, Deputy Clerk